

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KENNETH WALLACE,

Petitioner,

-v-

10-CV-0722Sr

THOMAS POOLE, Superintendent,
Five Points Correctional Facility,

Respondent.

ORDER

Petitioner Kenneth Wallace, an inmate of the Five Points Correctional Facility, by his attorney, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that his conviction in Supreme Court, Monroe County, State of New York, was unconstitutionally obtained, as set forth more precisely in the petition. Petitioner has also filed a declaration (Docket No. 7) and memorandum of law in support of the petition (Docket No. 6). Petitioner has paid the \$5.00 filing fee. Accordingly,

IT HEREBY IS ORDERED as follows:

1. Respondent shall file and serve an **answer** to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **March 21, 2011**. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of, and documents

relating to, such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in Supreme Court at issue now before this Court shall submit such records to respondent or the respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs and record on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have **thirty (30) days** upon receipt of the answer to file a written response to the answer and memorandum of law.

Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

2. The Clerk of Court shall serve a copy of the petition (Docket No. 1), memorandum of law (Docket No. 6) and declaration (Docket No. 7), together with a copy of this order, by certified mail, upon respondent Superintendent of Five Points Correctional Facility Correctional Facility and upon Office of the Attorney General, Federal Habeas Unit, 120 Broadway, 12th Floor, New York, New York 10271-0332. To advise appropriate Monroe County officials of the pendency of this proceeding, the Clerk of Court shall also mail a copy of this order to the District Attorney of Monroe County.

SO ORDERED.

DATED: Buffalo, New York
September 27, 2010

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge